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**DRAFT DEPARTMENT OF STATE
RECORD OF DECISION AND NATIONAL INTEREST
DETERMINATION**

**Enbridge Energy, Limited Partnership – Alberta Clipper Pipeline
Application for Presidential Permit**

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1.0 Summary

On May 15, 2007, Enbridge Energy, Limited Partnership (Enbridge) submitted an application to the U.S. Department of State (DOS) for construction, connection, operation, and maintenance of an oil pipeline and associated facilities at the U.S./Canada border to enable Enbridge to import heavy crude oil from Canada (the Alberta Clipper Project). Enbridge is a limited partnership duly organized under the laws of the State of Delaware. Enbridge is a wholly owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners") which is a Delaware master limited partnership headquartered at 1100 Louisiana, Suite 3300, Houston, Texas 77002. Enbridge Partners provides pipeline transportation of petroleum and natural gas in the Mid-Continent and Gulf Coast regions of the United States, in addition to gathering, processing, and other related operations. Enbridge Partners' two primary business segments are liquids transportation and natural gas. The liquids transportation segment involves the transportation by pipeline of crude petroleum and natural gas liquids via three main interstate pipeline systems (Lakehead, North Dakota and Ozark). The natural gas business segment involves the interstate and intrastate transportation by pipeline of natural gas as well as related gathering, midstream, and marketing operations. Enbridge Partners operates over 5,000 miles of liquids pipeline facilities in sixteen different states.

Executive Order 13337, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential permits upon a national interest determination. On February 13, 2009, Secretary Clinton delegated to the Deputy Secretary of State and to the Deputy Secretary of State for Management and Resources, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. Department of State Delegation of Authority No. 245-1.

The United States portion of the Alberta Clipper pipeline would consist of approximately 326.9 miles of new 36-inch-diameter pipeline and associated facilities that would be installed primarily within or adjacent to the existing Enbridge pipeline corridor from the U.S./Canada border to the existing Enbridge terminal in Superior, Wisconsin. The Project also would require new construction at existing pump stations and construction of delivery facilities and mainline valves. To meet anticipated demand, the proposed Alberta Clipper Project would provide approximately 450,000 bpd of heavy crude oil capacity. The capacity provided by the Project would provide independent utility to Enbridge and its customers for the transport of crude oil to the existing Enbridge terminal in Superior, Wisconsin. From there, crude oil can be delivered to refineries throughout U.S. Petroleum Administration for Defense District II (PADD II) and eastern Canada, as well as to other regions in the United States through interconnected existing pipeline systems. Enbridge proposes to begin construction activities for the Project in summer 2009, with a planned in-service date of early 2010, subject to receipt of all necessary permits, approvals, and authorizations pursuant to DOS regulations (40 CFR 1500-1508 and 22 CFR 161) and other relevant laws and regulations. The Canadian portion of the pipeline system has been approved by the Canadian National Energy Board (CNEB) and other reviewing entities in Canada and is under construction.

DOS has determined, through review of the Alberta Clipper Project application, that the Alberta Clipper Project would serve the national interest, in a time of considerable political tension in other major oil producing regions and countries, by providing additional access to a proximate, stable, secure supply of crude oil with minimum transportation requirements from a reliable ally

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and trading partner of the United States with which we have free trade agreements that further augments the security of this energy supply. Additionally, through bilateral diplomacy and a Clean Energy Dialogue process that is underway, the United States and Canada are working cooperatively across our respective energy sectors to cooperate on best practices and technology, including in carbon sequestration and storage, so as to lower the overall environmental footprint of our energy sectors.

Concerns have been raised about higher-than-average levels of greenhouse gas (GHG) emissions associated with oil sands crude. The Administration has considered these concerns and considers that on balance they do not outweigh the benefits to the national interests identified above. The United States will continue to reduce reliance on oil through conservation and energy efficiency measures, such as recently increased Corporate Average Fuel Economy (CAFÉ) standards, as well as through the pursuit of comprehensive climate legislation and a global agreement on climate change. In addition, the United States will cooperate with the Canadian government through the Clean Energy Dialogue and other processes to promote the deployment of technologies that reduce our respective GHG emissions.

Consistent with the National Environmental Policy Act of 1969 (NEPA), DOS conducted an environmental analysis of the project and prepared and submitted a Final Environmental Impact Statement (FEIS) to the EPA on June 5, 2009. The Deputy Secretary of State, acting under delegated authority, has reviewed Enbridge's amended application, the FEIS, and the suitability of Enbridge to hold a Presidential permit for the Alberta Clipper Project. Based upon that review, the Deputy Secretary of State finds that construction, maintenance and operation of the Project in accordance with the DOS preferred alternative would have limited adverse impact to the environment.

Consistent with Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, DOS, as the lead federal agency of a federal undertaking (issuance of a Presidential Permit), conducted consultation with consulting parties, including Indian tribes, to consider potential impacts to historic properties that would result from construction of the Alberta Clipper Project. DOS has determined that, after review of the information provided by Enbridge, consultation with the consulting parties, and the conclusion of a Programmatic Agreement (PA) to address the continuing roles and obligations of the consulting parties during the construction of the Alberta Clipper Project, the requirements of Section 106 are satisfied. Among other things, DOS intends to address the pending request from the Fond du Lac band that the 1854 Ceded Territory be recognized as a traditional cultural property pursuant to the terms of the PA.

Consistent with Section 7 of the Endangered Species Act (ESA), DOS consulted with and obtained the concurrence of the U.S. Fish and Wildlife Service (USFWS) with a final Biological Assessment (BA) on the Alberta Clipper Project. The BA concludes that the construction of the Alberta Clipper Project may affect, but is not likely to adversely affect, species protected under the ESA.

In light of these findings, the Deputy Secretary of State has decided to issue a Presidential Permit to Enbridge Energy, Limited Partnership, to construct, connect, operate, and maintain at the border of the United States pipeline facilities for the transport of crude oil between the United States and Canada as described in the Presidential Permit application received from Enbridge by DOS on May 15, 2007, as amended by the subsequent filings of Enbridge with the DOS, and in accordance with the measures described in the Environmental Mitigation Plan (EMP) and other mitigation and control plans contained in the FEIS.

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2.0 Introduction

2.1 Action

On May 15, 2007 Enbridge Energy, Limited Partnership (Enbridge) applied to DOS for a Presidential Permit for construction, connection, operation, and maintenance of facilities at the border of the United States for the importation of petroleum from a foreign country. Executive Order 13337, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential permits upon a national interest determination. As noted above, the functions assigned to the Secretary have been further delegated within the Department of State to the Deputy Secretary of State, the Under Secretary of State for Political Affairs and the Under Secretary of State for Economic, Energy and Agricultural Affairs. Further, on February 13, 2009, Secretary Clinton delegated to the Deputy Secretary of State and to the Deputy Secretary of State for Management and Resources, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. Department of State Delegation of Authority No. 245-1.

The DOS engaged in an environmental review of the project consistent with NEPA and prepared and issued a Final Environmental Impact Statement (FEIS) on June 5, 2009. This FEIS addresses the portion of the Alberta Clipper pipeline within the United States to inform the Department's decision on issuance of a Presidential Permit in response to Enbridge's application and to support the decisions of other federal agencies whose actions are necessary to allow the project to proceed.

Issuance of a Presidential Permit to Enbridge would allow it to construct, connect, operate and maintain pipeline facilities at the border between the United States and Canada within a right-of-way adjacent to the point at which Enbridge's existing pipeline facilities cross the border.

2.2 Alberta Clipper Pipeline

The proposed Alberta Clipper pipeline would be a new pipeline that would transport crude oil from Enbridge's existing facilities in Hardisty, Alberta, Canada to its existing terminal in Superior, Wisconsin. From there, the liquid hydrocarbons would be transported to Midwestern markets, the eastern United States and Canada, and the Midcontinent and U.S. Gulf markets. Crude oil would be transported to markets in the Midwest and beyond via Enbridge's Lakehead System, non-Enbridge pipelines, and potentially through pipelines that may be constructed in the future. The proposed pipeline would be designed to transport an average crude oil volume of approximately 450,000 bpd.

Overall, the Alberta Clipper pipeline would consist of a new pipeline and associated facilities in both Canada and the United States. This Record of Decision and National Interest Determination, only address the United States portion of the Alberta Clipper pipeline in accordance with CEQ guidance on NEPA, implementing regulations, and EO 12114 and 13337. The primary components of the U.S. portion of the pipeline would be the new pipeline, new mainline valves, and additional pumping capacity at three existing pump stations. The U.S. portion of the pipeline would extend approximately 326.9 miles from the U.S./Canada border near Neche, North Dakota through Minnesota and Wisconsin to the existing Enbridge terminal in Superior, Wisconsin. A

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total of 32 mainline valves would be installed at key locations along the alignment. The Canadian portion of the pipeline system has been approved by the Canadian National Energy Board (CNEB) and other reviewing entities in Canada and is under construction.

The U.S. portion of the pipeline system was evaluated in the DOS FEIS issued on June 5, 2009. It traverses either all or portions of the States of North Dakota, Minnesota, and Wisconsin. The project will be located primarily in rural areas, but will be routed through or near populated areas occurring around Bemidji, Minnesota, the Leech Lake Reservation in Minnesota, the Fond du Lac Reservation in Minnesota, and Superior, Wisconsin. The U.S. counties that will be affected by the pipeline are:

- Pembina County in North Dakota
- Kitson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, and Carlton Counties in Minnesota and
- Douglas County in Wisconsin

The Alberta Clipper pipeline would be installed within or adjacent to the existing Enbridge right-of-way along the majority of its route. Enbridge has identified 42 locations where the construction right-of-way would be 85 feet or more from the existing right-of-way due to the need to avoid conflicts with existing land uses. The total distance of those 42 sections of the route would be approximately 40 miles, or about 12 percent of the total route.

Along most of the route, construction activities would require a 140-foot-wide construction right-of-way. In wetland areas, the total width of the construction right-of-way would be reduced to 125 feet, except where construction through wetlands is conducted during winter. In those areas, the construction right-of-way would be 140 feet.

From Neche to Clearbrook, the pipe would be generally installed approximately 25 feet from the Southern Lights LSr Project pipeline. Along that portion of the proposed route, the spoil side (the area used to store topsoil and excavated material) typically would be approximately 35 to 50 feet wide and within Enbridge's existing maintained right-of-way. The working side (equipment work area and travel lane) typically would be 90 feet wide and generally outside of Enbridge's existing maintained right-of-way.

Between Clearbrook and Superior, the Alberta Clipper would be constructed within the same corridor at approximately the same time. The spoil side of the construction right-of-way typically would be approximately 50 feet wide and within Enbridge's existing maintained right-of-way. The working side of the construction right-of-way typically would be 90 feet wide and outside of Enbridge's existing maintained right-of-way.

Aboveground facilities would include mainline valves installed within the same construction right-of-way as that of the pipeline. The new pumps and associated facilities required at the three existing pump stations would require the following area: 3.2 acres at the Viking Pump Station, 2.1 acres at the Deer River Pump Station, and 1.8 acres at the Clearbrook Pump Station (which is located within the boundaries of the Clearbrook Terminal). At the Viking Pump Station, all facilities would be constructed on Enbridge's existing property but would be outside of and adjacent to the existing fenced area. At the Deer River Pump Station, all new facilities except the electrical switchgear building would be within the existing fence line; the area required outside of and adjacent to the existing station would cover about 0.06 acre and would be on existing Enbridge property. The fenced area would be expanded to include the new facilities at the Viking Enbridge property.

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and Deer Park locations. All of the new facilities required for the Project at the Clearbrook Pump Station would be installed within the fenced area of the Clearbrook Terminal.

Construction of the U.S. portion of the pipeline route would involve a total of three perennial and 24 intermittent waterbody crossings in North Dakota; 76 perennial and 86 intermittent waterbody crossings in Minnesota (15 additional crossings have not yet been surveyed), and one perennial and 13 intermittent waterbody crossings in Wisconsin. Approximately 1,346.16 acres of wetlands would be impacted during construction of the proposed Project, 820.64 acres of which would be permanently maintained in an herbaceous state during operations. The predominant wetland types that would be crossed by the proposed Project are forested and scrub-shrub communities.

Extra construction workspace areas would be needed where the proposed route crosses features such as waterbodies, some wetland crossings, steep slopes, roads, railroads, and existing pipelines and utilities. These extra workspaces, which would be outside of the typical construction right-of-way, would be used to stage equipment and stockpile excavated material. It is expected that refinement of extra workspace areas would continue during the pre-construction phase of the proposed Project. Additional extra workspace areas may be needed as determined by site conditions at the time of construction. If additional extra workspace is needed beyond the areas identified in the FEIS, Enbridge would seek approval from the appropriate agencies for establishing each workspace prior to use of an area.

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3.0 Statutory Authority and Requirements

The Secretary of State has the authority under Executive Order 13337, as amended, to approve or deny applications for Presidential Permits and to issue such permits on such terms and conditions that the Secretary determines are appropriate, if the Secretary finds that issuance of the permit would serve the national interest. The President has delegated this authority to the Secretary based on his authority under the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code. The functions assigned to the Secretary have been further delegated within the Department of State to the Deputy Secretary of State, the Under Secretary of State for Political Affairs and the Under Secretary of State for Economic, Energy and Agricultural Affairs. Further, on February 13, 2009, Secretary Clinton delegated to the Deputy Secretary of State and to the Deputy Secretary of State for Management and Resources, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. Department of State Delegation of Authority No. 245-1.

Executive Order 13337 specifically authorizes the issuance of Presidential Permits for the "construction, connection, operation, or maintenance at the borders of the United States of facilities for the exportation or importation of petroleum, petroleum products, coal or other fuels to or from a foreign country." Because the Alberta Clipper Project seeks to transport crude oil between Canada and the United States across the international border, the Alberta Clipper Project is within the scope of Executive Order 13337 and within the authority of the Secretary of State (or her delegate) under that Executive Order. Once the Secretary's decision has been made, selected agency officials may indicate their disagreement with the decision and request that the Secretary refer the application to the President under Executive Order 13337. In the event no such request is made within 15 days of notification of the Secretary's decision, the Secretary's decision is final and the Presidential Permit is issued.

As noted above, when reviewing an application for a Presidential Permit, the Secretary is required to determine if issuance of the permit is in the national interest. The Secretary also considers the environmental impacts of the proposed action consistent with NEPA and considers any other relevant statutory provisions. These have been determined to include:

- a) Section 404 of the Clean Water Act - The Alberta Clipper Project will affect jurisdictional wetlands and require crossing of navigable waters of the United States. These actions will require Enbridge to obtain permits from the U.S. Army Corps of Engineers (COE).
- b) Section 7 of the Endangered Species Act (ESA) - The Alberta Clipper Project will be constructed and operated in areas where federally listed species or their critical habitat are known to occur. DOS has prepared a Biological Assessment, in consultation with the U.S. Fish and Wildlife Service (USFWS) and state agencies, concerning effects of the Alberta Clipper Project on species listed for protection.
- c) Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended - The DOS, as the lead federal agency on a federal undertaking (issuance of a Presidential Permit), is required to consider the impacts to historic properties before that undertaking occurs and take appropriate actions.

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The purpose of preparing a project-specific EIS consistent with NEPA is to provide a public document that informs decision makers about the potential environmental impacts of a project if it is undertaken in accordance with existing laws and regulations. The purpose is not to speculate on potential changes to laws or policies that may occur at some undetermined time in the future. Therefore, the EIS for the proposed Alberta Clipper Project does not consider such speculative changes to laws or policies. DOS recognizes that the proposed Project, if approved, would need to adhere to all applicable laws that exist at the time of construction and operation.

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4.0 Purpose and Need for the Alberta Clipper Project

The overall purpose of the Alberta Clipper Project is to enable the transport of additional crude oil into the United States from existing Enbridge facilities in western Canada to meet the demands of refineries and markets in those areas. Enbridge has proposed the Project to (1) meet the increased demand for heavy crude oil by refiners in the United States and offset the decreasing domestic crude oil supply from some regions of the United States that have traditionally served refineries in U.S. Petroleum Administration for Defense District II (PADD II – the U.S. Midwest); (2) reduce U.S. dependence on oil obtained from outside of North America by increasing access to more stable and secure Canadian crude oil supplies; and (3) meet demonstrated shipper interest in an overall Enbridge system expansion.

The U.S. Energy Information Agency (EIA) projects that the balance between domestic supply and demand will require the “unconventional” oil supply from Canada, which is predominately heavy crude from reserves in western Canada, to grow from approximately 1.5 million bpd in 2008 to over 4.3 million bpd by 2030. This increase in heavy crude imports is consistent with the observation that many U.S. refineries have been, or are in the process of being, retrofitted to accommodate heavy crude in order to remain cost-competitive with overseas suppliers of refined petroleum products.

Nearly all heavy and light crude oil imported from Canada in 2006 came from the Western Canadian Sedimentary Basin, and nearly all of it was transported through three major pipeline systems: Enbridge, Kinder Morgan Express, and Kinder Morgan TransMountain. These three pipelines have a maximum transport capacity of about 2.4 million bpd, with about 1.9 million bpd transported from the basin to several U.S. markets, including the Midwest. However, the majority of that volume continues to be sold into PADD II, where a large proportion of U.S. refining capacity is located. In recent years, the amount forwarded on to refiners in PADD III (the U.S. Gulf Coast) increased to meet refinery needs in that area as capacity grew and to slightly offset declines in offshore production or waterborne imports. These two districts are directly and indirectly served by the Enbridge system and Kinder Morgan Express, which together have a crude oil capacity—including both heavy and light crudes—of 2.0 million bpd.

With the Canadian National Energy Board’s 2006 projections of an additional 1.5 million bpd of production from the basin by 2015 and assuming that Canada continues to export more than 70 percent of its production to the United States (the current export amount), an additional 1.1 million bpd of heavy crude oil will be flowing from the basin to the United States by 2015. This is approximately consistent with the Canadian Association of Petroleum Producer’s projection of a pipeline capacity shortfall of 1.9 million bpd by 2015.

U.S. refiners have upgraded their refineries to process heavy crude oil, much of which is obtained from relatively unstable and insecure foreign sources. The crude oil that the Alberta Clipper Project would assist in delivering to U.S. refiners would replace or supplement a portion of that existing supply of heavy crude oil.

To meet the anticipated demand, the proposed Alberta Clipper Project would enable the cross-border transport of approximately 450,000 bpd of heavy crude oil. The transportation capacity provided by the Project would provide independent utility to Enbridge and its customers for the transport of crude oil to the existing Enbridge terminal in Superior, Wisconsin. From there, crude oil can be delivered to refineries throughout PADD II and eastern Canada, as well as to other

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regions in the United States through interconnected existing pipeline systems. Enbridge would not own the oil and would not determine its destination.

Some of the capacity shortfall will be met by the 450,000-bpd capacity of the Keystone Pipeline Project (upgradeable to 590,000 bpd), which is currently being constructed by TransCanada. However, the refinery market served by the Keystone Project is largely different from the markets that would be served by the Alberta Clipper pipeline. The Alberta Clipper pipeline would tie into existing pipeline infrastructure in Superior, Wisconsin and primarily provide crude oil to refineries in the Midwest United States (e.g., Wisconsin, Michigan, Indiana) and Canada. The Keystone Project would primarily provide crude oil to southern Illinois, Oklahoma, and potentially refineries along the Gulf Coast. An additional portion of the capacity shortfall could be met by the Alberta Clipper pipeline's proposed pipeline capacity of 450,000 bpd. The remaining shortfall of 60,000 to 860,000 bpd would necessitate additional pipeline construction and/or expansion, which could include the proposed Keystone XL pipeline from Alberta to the U.S. Gulf Coast. This proposed pipeline would have an initial capacity of 700,000 bpd and an ultimate capacity of 900,000 bpd.

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5.0 Description of Environmental Impacts, Alternatives Considered, and Environmental Commitments and Mitigation

Consistent with NEPA, DOS staff prepared a FEIS to inform the DOS, and allow the DOS to consider, the potential environmental, social, and economic impacts of the U.S. portion of Enbridge's proposed pipeline when making the decision to approve or deny Enbridge's Application for a Presidential Permit. The EIS was prepared consistent with the Council for Environmental Quality (CEQ) implementing regulations on NEPA's Procedural requirements (40 CFR Parts 1500-1508, as amended), Executive Order 11514 on Protection and Enhancement of Environmental Quality (35 Fed. Reg. 4247, as amended (March 5, 1970), and the Department of State's own regulations, 22 C.F.R. Part 161, as amended. The EIS for the U.S. portion of the pipeline was prepared by Entrix, Inc., on behalf of the Department of State. The EIS examined the impacts of the United States portion of the Alberta Clipper pipeline, including connected actions. The scope of the EIS was determined after consideration of input from the public, Indian tribes, and federal, state and local agencies. Short-term and long-term construction and operations impacts were analyzed as were the cumulative impacts of construction and operation of the U.S. portion of the Alberta Clipper pipeline as well as other past, present, and reasonably foreseeable future projects.

The EIS included an analysis of reasonable project alternatives to determine whether any would be preferable to Enbridge's proposed action. Alternatives considered included: system alternatives (use of other existing or proposed pipelines), major route alternatives, route variations, and alternative sites for aboveground facilities. The No Action alternative was also evaluated.

The EIS analysis found that none of the system alternatives could meet the project objectives presented by Enbridge. Enbridge's proposed pipeline route was found to be preferred to the other route alternatives considered, either because the other route alternatives did not meet project objectives or because the other route alternatives had greater impacts as a result of greater length or increased effects on sensitive resources.

A summary of the potential direct, indirect and cumulative impacts of construction and operation of the U.S. portion of the Alberta Clipper pipeline is provided below. A summary of the mitigation measures presently included in the EMP and those to be included as a result of consultation with federal and state agencies during the EIS process is also provided below.

5.1 Geology

The U.S. portion of the proposed Alberta Clipper pipeline would not involve substantial topographical alteration and would not disturb any geological features protected by federal or state laws. Less than 1 percent of the proposed pipeline route may require blasting. The Enbridge Blasting Plan (Appendix L of the EIS) identifies requirements for developing a site-specific blasting plan for any area where blasting is deemed necessary. These site-specific plans would account for protection of aboveground and below ground structures (such as water mains), resources (such as threatened and endangered species), and water resources (surface water and groundwater). Pleistocene-age mammal fossils may be unearthed during excavation activities in the area of the proposed pipeline; however, it is unlikely that any scientifically significant fossils are present in the area of the proposed pipeline.

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Proposed construction techniques, along with erosion control and slope stabilization, and measures identified in the Enbridge EMP (Appendix C of the EIS) and other plans would reduce potential impacts related to geologic hazards.

Overall, geologic impacts associated with routine operations and maintenance of the proposed pipeline would be minimal. Routine pipeline operation and maintenance are not expected to affect physiography or bedrock geology, paleontological resources, mineral resources, or flooding.

5.2 Soils

Construction of the U.S. portion of the proposed Alberta Clipper pipeline would disturb soils, resulting in increased potential for erosion, compaction, and mixing of topsoil; damage to agricultural drainage tiles; and introduction of rock to the surface soil. Agricultural production on approximately 2,528.8 acres would be temporarily lost from production for the construction season. Enbridge has proposed construction procedures, including state-specific EMPs (Appendix C of the EIS) and an Agricultural Mitigation Plan (Appendix F of the EIS), designed to minimize the likelihood and severity of these impacts, and to mitigate where impacts are unavoidable.

In the event that previously contaminated soils were discovered during construction, Enbridge would stop work immediately, contact the appropriate state or tribal agency, and consult with the agency with respect to an acceptable plan of action in accordance with Enbridge's Petroleum-Contaminated Soil Management Plan (Appendix J of the EIS).

Should a spill occur that causes damage to soil productivity, Enbridge's easement agreements with landowners would require Enbridge to restore the productivity of the right-of-way and compensate landowners or tenants for demonstrated losses associated with decreased productivity resulting from pipeline construction and operation. Impacts would be mitigated in compliance with applicable federal, state, tribal, and local cleanup standards.

Enbridge has also developed an Anthrax Mitigation Plan (Appendix I of the EIS) to address the potential exposure of animals to anthrax spores resulting from construction activities.

Overall, construction and operation of the U.S. portion of the proposed pipeline are expected to cause minor impacts to soil resources with implementation of the existing Enbridge plans and compliance with applicable regulations and permits.

5.3 Water Resources

Only short-term fluctuations of groundwater levels are expected during construction, and recharge is expected to occur in a short period after construction. Implementation of Enbridge's procedures for minimizing the likelihood of a spill and controlling the impacts if a spill were to occur would reduce potential impacts during construction or operation, as described in the Spill Prevention, Containment, and Control Plan (SPCC) (Appendix E of the EIS) and Emergency Response Plan (Appendix Q of the EIS).

The U.S. portion of the proposed Alberta Clipper pipeline route would involve a total of three perennial and 24 intermittent waterbody crossings in North Dakota; 76 perennial and 86 intermittent crossings in Minnesota (15 additional crossings have not yet been surveyed), and one perennial and 13 intermittent waterbody crossings in Wisconsin.

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Construction of the pipeline could result in temporary or short-term impacts due to increased sedimentation, degradation of aquatic habitat from instream construction activities, increased runoff and erosion, changes in channel morphology and stability, temporary reductions in flow during hydrostatic testing activities, alteration of aquatic habitat, and temporary to short-term surface water quality degradation during or after construction from disposal of materials and equipment or from vehicle spills and leaks. Various mitigation measures are proposed to avoid and minimize these potential impacts, including locating extra workspace areas at least 50 feet from the edge of a waterbody, providing temporary erosion control for certain waterbody crossing methods, and restoring waterbodies as soon as practical after construction. Implementation of measures described in the state-specific EMPs (Appendix C) would reduce erosion of soil or sediment and control surface water runoff during construction activities near waterbodies.

Overall, it is not anticipated that groundwater or surface water quality would be significantly affected during pipeline construction or operation.

Subsequent to the issuance of FEIS, EPA raised concerns that construction of the proposed Project could exacerbate groundwater contamination problems in the vicinity of the St. Regis Superfund site that could pose a threat to worker safety. As stated in the FEIS, previous investigations found no evidence of soil contamination along the proposed Project route. EPA is currently working with Enbridge to develop work plans to investigate groundwater contamination in the vicinity of the St. Regis Superfund Site. DOS urges Enbridge to finalize a work plan to investigate potential groundwater contamination and coordinate with EPA on any appropriate measures to protect worker safety and minimize potential environmental impacts in the event that there is groundwater contamination along the proposed route.

5.4 Wetlands

Approximately 1,346.16 acres of wetlands would be impacted during construction and operation of the U.S. portion of the proposed pipeline, 820.64 acres of which would be permanently maintained in an herbaceous state during operations. The proposed pipeline would cross one known and five potential wetlands listed in the Minnesota Department of Natural Resources (MDNR) Protected Waters Inventory as public water wetlands. Two Wetlands Reserve Program (WRP) wetlands, the Pokegama Carnegie Wetlands, and the Superior Airport/Hill Avenue Wetlands/South Superior Triangle Wetlands, also would be crossed by the proposed Alberta Clipper pipeline. Enbridge is currently consulting with Wisconsin Department of Natural Resources (WDNR) and the Army Corps of Engineers (COE) to conduct an alternatives analysis in this area and has developed the Pokegama Plan (Appendix T of the EIS) that would minimize impacts to the resource. Enbridge minimized impacts to the Superior Airport/Hill Avenue Wetlands/South Superior Triangle Wetlands during initial routing and does not propose additional mitigation.

To minimize potential construction and operation impacts, Enbridge would implement procedures outlined in the state-specific EMPs (Appendix C of the EIS) for wetland crossings. Enbridge would minimize impacts and restore wetlands affected by construction activities, to the extent practical. In addition to standard construction efforts, winter construction has been proposed for up to approximately 25 miles of expansive wetlands. Enbridge has prepared a Winter Construction Plan (Appendix O of the EIS) that identifies several mitigation measures to reduce impacts to wetlands associated with winter construction activities.

To further minimize impacts to this habitat, and in accordance with current or expected COE, MDNR, and Minnesota Public Utilities Commission (MPUC) permitting requirements, DOS has

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recommended that Enbridge develop a construction management plan for approval by the COE at least 1 week prior to construction to include: an endangered resource plan; identification and inventory of existing plant communities; a preliminary wetland restoration plan; a replanting and reseeding plan; and a preliminary 5-year, site-specific post-construction monitoring plan for the wetland complex located between MP 853 and MP 854, or as otherwise directed by the COE for the U.S. portion of the Alberta Clipper pipeline; and that Enbridge take all necessary and reasonable measures to protect the wetland complex between MP 853 and MP 854, and submit proposed site plans to MDNR and MPUC 14 days prior to construction through the area, or as otherwise directed by MDNR and MPUC for the Alberta Clipper pipeline. Impacts to the sensitive vegetation at this location would further be minimized by construction of the pipeline on the north side of the right-of-way where the habitat is less sensitive.

Compensatory wetland mitigation is being developed in consultation with the COE and appropriate state resource agencies to offset unavoidable impacts to wetlands, which would result in no net loss of wetland function due to the proposed pipeline.

Overall, temporary and permanent impacts to wetlands, mitigated according to Enbridge plans and agency requirements would result in minor impacts to wetland resources.

5.5 Terrestrial Vegetation

Vegetation classes potentially affected by the U.S. portion of the proposed Alberta Clipper pipeline during construction include upland forested lands (1,254.5 acres), agricultural lands (2,528.8 acres), developed lands (617.2 acres), open lands (655.4 acres), and wetlands (1,346.2 acres). The primary impacts to vegetation from construction would be cutting, clearing, or removing the existing vegetation within the construction work area, along with the potential introduction of noxious weeds.

The same vegetation communities would be affected by the pipeline during operations since the permanent right-of-way would be maintained in an herbaceous condition. The permanent right-of-way would consist of previously forested uplands (622.2 acres), agricultural lands (569.4 acres), developed lands (36.7 acres), open lands (195.2 acres), and wetlands (820.7 acres). Permanent impacts would occur within the permanent right-of-way, where trees and shrubland would be removed and prevented from reestablishing through the periodic mowing and brush clearing required for pipeline operation and inspections.

Impacts to forested lands would be incurred in the areas within the permanent right-of-way that would not be allowed to revert to pre-construction cover. Even in construction areas that would be able to revert to forested land, complete recovery of these areas would require decades. Therefore, pipeline construction in forested areas would cause a long-term to permanent, localized impact on forested land.

Enbridge has identified measures to limit impacts to vegetation in its Agricultural Mitigation Plan (Appendix F of the EIS), state-specific EMPs (Appendix C of the EIS), Noxious Weed Plans (Appendix H of the EIS), and Revegetation and Restoration Monitoring Plans (Appendix K of the EIS). To further minimize potential impacts, DOS has identified mitigation measures to address potential impacts to vegetation communities of conservation concern and noxious weeds. In accordance with federal and/or state permitting requirements, DOS has recommended that Enbridge should:

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- Take care to avoid damage between April 1 and July 1 to any live, standing residual oak trees adjacent to the right-of-way in counties where oak wilt occurs, and when construction occurs through forested areas containing oak trees. If any such damage does occur, the damaged areas on the trees should be immediately covered with pruning or latex paint.
- Develop a Construction Mitigation Plan (CMP) for the wetland complex located between MP 853 and MP 854, for approval by the COE at least 1 week prior to construction, that provides, among other things, an endangered resource plan; identification and inventory of existing plant communities; a preliminary wetland restoration plan; a replanting and reseeding plan; and a preliminary 5-year, site-specific post-construction monitoring plan—or as otherwise directed by the COE for the U.S. portion of the Alberta Clipper pipeline.
- Take all necessary and reasonable measures to protect the wetland complex between MP 853 and MP 854, and submit proposed site plans to MDNR and MPUC 14 days prior to construction through the area, or as otherwise directed by MDNR and MPUC for the U.S. portion of the Alberta Clipper pipeline.

In addition, DOS has recommended that revegetation in non-agricultural areas be considered successful if upon visual survey the density and cover of non-nuisance vegetation are similar in density (i.e., greater than 70 percent) and cover to adjacent undisturbed lands. With implementation of Enbridge's proposed mitigation and the additional mitigation measures identified by DOS, impacts to terrestrial vegetation for the proposed Project would be minor.

5.6 Wildlife

Construction and operation of the U.S. portion of the proposed Alberta Clipper pipeline would result in both short-term disturbance and long-term modification to wildlife habitats, including increased habitat fragmentation and widening of the existing right-of-way. Total habitat loss and alteration due to pipeline construction would be small in the context of available habitat because of the linear nature of the pipeline and the extent of collocation proposed. Operation of the pipeline would be expected to have little, if any, additional effects on wildlife.

To limit potential construction and operation impacts to wildlife, Enbridge has identified mitigation procedures in its state-specific EMPs (Appendix C of the EIS), Revegetation and Restoration Monitoring Plans (Appendix K of the EIS), and Noxious Weed Plans (Appendix H of the EIS), as well as in the Agricultural Mitigation Plan (Appendix F of the EIS) and Migratory Bird Plan (Appendix V of the EIS). Pipeline construction would also be conducted in accordance with required permits.

In addition, DOS has recommended that Enbridge, in accordance with USFWS requirements, should finalize plans to survey for migratory bird nests during the nesting season; finalize measures to avoid impacts to migratory bird nests, such as avoidance of land clearing during the primary nesting season (May 1 through July 15 within the Project area); and continue to consult with FWS to develop compensatory mitigation for the loss of quality upland nesting habitats for migratory birds.

Implementation of measures in the Enbridge plans, along with the mitigation measures recommended by the COE, USFWS, and DOS, would reduce impacts to wildlife. Consequently, overall impacts to wildlife resulting from the U.S. portion of the Alberta Clipper pipeline are expected to be minor.

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5.7 Fisheries

The U.S. portion of the proposed Alberta Clipper pipeline could affect fisheries resources by loss or alteration of habitat; reduced spawning success; direct and indirect mortality; adverse health effects; and loss of individuals and habitats due to hydrostatic testing and exposure to toxic materials. Enbridge would adhere to agency recommendations on timing windows for instream work. All stream crossing methods would require review and approval by the COE and other relevant agencies prior to construction. In addition, Enbridge would need to demonstrate to the COE that each waterbody crossing method is the Least Environmentally Damaging Preferred Alternative (LEDPA) in accordance with EPA's 401(b)(1) Guidelines and COE's regulations.

Enbridge proposes to modify crossing methods based on flow conditions at the time of construction. Consequently, the open-cut method would be used for waterbodies planned as a dry crossing, if the waterbody is dry or has no perceptible flow at the time of construction. Alternatively, a dry crossing method would be used for waterbodies planned as an open cut, but with perceptible flow at the time of construction.

Potential impacts would be avoided and minimized to the degree practical by implementing Best Management Plans (BMPs). The state-specific EMPs (Appendix C of the EIS) describe the BMPs that would be used for each type of waterbody crossing to reduce potential effects on fish and aquatic/streambank habitat. To minimize the impacts of construction activities on fish and their habitats, Enbridge generally would complete all open-cut instream activity for minor waterbody crossings (less than 10 feet wide) within 24 hours and all activity for intermediate (10 to 99 feet wide) and major (100 feet wide or greater) waterbodies would be crossed in less than 48 hours, not including those crossed using the horizontal directional drill (subsurface) construction method.

DOS has recommended that Enbridge develop a Construction Management Plan for the Lost River—for approval by the COE at least 1 week prior to construction—that includes confirmation of the crossing method, site-specific mitigation to minimize impacts, a list of all sediment and erosion control equipment that would be on-site, and an endangered resource plan, as directed by the COE.

Implementation of the Enbridge plans and DOS-recommended mitigation would result in overall minor impacts to aquatic habitat and organisms.

5.8 Threatened, Endangered, and Sensitive Animals and Plants

Federally-listed threatened, endangered, or candidate species identified by the USFWS as potentially being affected by the U.S. portion of the Alberta Clipper pipeline include Kirtland's warbler, piping plover, Canada lynx, gray wolf (delisted by USFWS in a final rule dated April 2, 2009; effective May 4, 2009), Dakota skipper, and western prairie fringed orchid. In addition to the federally-protected species identified, several state- and tribal-designated threatened, endangered, and sensitive species were identified as potentially being affected by the U.S. portion of the proposed pipeline.

Construction of the U.S. portion of the Alberta Clipper pipeline would result in a small reduction in available habitats for some sensitive bird species, mammals, aquatic animals, and plants. Enbridge has identified mitigation procedures in its state-specific EMPs (Appendix C of the EIS), Revegetation and Restoration Monitoring Plans (Appendix K of the EIS), and Noxious Weed Plans (Appendix H of the EIS), as well as in the Agricultural Mitigation Plan (Appendix F of the

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EIS) and Migratory Bird Plan (Appendix V of the EIS) that would reduce impacts on special-status species. Pipeline construction would be conducted in accordance with required permits. Impacts to sensitive mammals, plants, and aquatic animals would be minimized by implementation of measures described in these plans and measures recommended by the COE, USFWS, state resource agencies, and tribes.

Further, DOS has recommended that Enbridge, in accordance with USFWS requirements, finalize plans to survey for migratory bird nests during the nesting season; continue to develop measures to avoid impacts to migratory bird nests, such as avoidance of land clearing during the primary nesting season (May 1 through July 15 within the U.S. portion of the Alberta Clipper pipeline area); and continue to consult with USFWS to develop compensatory mitigation for migratory bird nesting habitat loss. Enbridge should relocate the creek heelsplitter mussels encountered in the Swan River (MP 1024.2) prior to instream construction and/or in accordance with COE requirements associated with these waterbody crossings.

With these measures, DOS concludes that the U.S. portion of the Alberta Clipper pipeline either would have no effect or may affect, but would not be likely to adversely affect, federally-listed or candidate species. Section 7 informal consultation with USFWS has been completed, and USFWS has concurred with the determinations presented in the EIS for federally-listed threatened, endangered and candidate species.

5.9 Land Use

Land uses that would be affected by the U.S. portion of the Alberta Clipper pipeline include agriculture, open land, wetlands, waterbodies, residential land, and recreational and other special interest areas. In general, lands required for construction would be temporarily impacted, while lands required for operation of the pipeline would be permanently impacted. Construction of the proposed pipeline would affect the following land use categories: forested lands (1,254.5 acres), agricultural lands (2,528.8 acres), developed lands (617.2 acres), open lands (655.4 acres), and wetland/open water (1,346.2 acres). Total land use acres that would be affected by construction of the proposed pipeline are 6,402.1 acres.

To address potential impacts to agricultural lands, Enbridge has proposed a number of mitigation measures that are detailed in the Agricultural Mitigation Plan (Appendix F of the EIS). Further, Enbridge would compensate all landowners for lost crops during construction and any documented damage caused by construction activities. After construction, Enbridge would repair or restore drain tiles, fences, and land productivity as these may be damaged during the construction process; agricultural land would be allowed to revert to its previous uses, except for land that would be set aside for permanent access roads; Enbridge would directly purchase such land from individual landowners. Construction impacts to general agricultural activities are expected to be minor and temporary; operations impacts would be minor but permanent.

On open lands, construction would require clearing of herbaceous plants and shrubs on the existing right-of-way and in construction work areas. Clearing of these shrubs and plants would result in some minor impacts. Enbridge would reseed and mulch upland open land areas after construction is completed.

Impacts to forested lands would be incurred in the areas within the permanent right-of-way that would not be allowed to revert to pre-construction cover. Even in construction areas that would be able to revert to forested land, complete recovery of these areas would require decades.

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Therefore, pipeline construction in forested areas would cause a long-term to permanent, localized impact on forested land.

Enbridge has developed site-specific construction and mitigation plans for construction activities near residential and commercial structures. Operation of the pipeline has the potential to impact residential properties and landowners. Structures would not be permitted on the permanent right-of-way, and trees would not be allowed to re-grow within the pipeline right-of-way. This permanent easement on residential properties would be considered a permanent impact in that it restricts the use of that portion of the property. This limited use would be accounted for in the easement negotiations between individual landowners and Enbridge.

The U.S. portion of the Alberta Clipper pipeline would cross various recreation and special interest areas, resulting in temporary construction impacts and potential permanent impacts. Enbridge has developed mitigation measures for these areas in the state-specific EMPs (Appendix C of the EIS). The area of the Chippewa National Forest (CNF) crossed by the proposed pipeline is completely within the Leech Lake Reservation. A detailed description of impacts and mitigation measures within these areas is provided in Appendix U of the EIS.

The proposed pipeline would cross approximately 12.9 miles of the Fond du Lac Reservation; the entire length of the pipeline through the reservation would be collocated with the existing Enbridge pipeline right-of-way. Enbridge is working closely with the Fond du Lac Band to develop site-specific mitigation and minimization measures for reservation lands.

Implementation of measures in the Enbridge state-specific EMPs (Appendix C of the EIS), Agricultural Mitigation Plan (Appendix F of the EIS), Noxious Weed Plans (Appendix H of the EIS), Revegetation and Restoration Monitoring Plans (Appendix K of the EIS), and Construction Environmental Control Plan (Appendix M of the EIS) would reduce potential land use impacts. Enbridge has committed to implementing a comprehensive inspection, monitoring, and compliance control plan to ensure that multiple contractors comply with the conditions of all permits. Enbridge has developed a Complaint Handling Procedures Plan (Appendix X of the EIS) to ensure that all landowner concerns are handled appropriately. This plan was designed to provide landowners with the necessary contact information in the event that the details of the individual easement negotiations or details of the mitigation plans referenced throughout this document are not being upheld. Implementation of the Enbridge proposed plans and mitigation would result in overall minor impacts to land use.

5.10 Socioeconomics

Construction and operation of the U.S. portion of the Alberta Clipper pipeline could result in several types of socioeconomic impacts. Impacts could be temporary due to construction and more long-term or permanent due to operation of the pipeline. Possible temporary impacts include changes to local population levels and demographics, increased demands for housing and public services, changes in transportation needs, increased traffic, and increased employment opportunities or needs for local goods. Long-term impacts due to operation would include employment, income benefits, and increased tax revenue due to property taxes paid by Enbridge.

Overall, impacts related to socioeconomic resources are expected to be minor but mostly positive for the U.S. portion of the Alberta Clipper pipeline.

5.11 Cultural Resources

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Field studies were conducted to identify archaeological and historic resources for the Alberta Clipper Project. The Fond du Lac Band of Lake Superior Chippewa, Leech Lake Band of Ojibwe, and Mille Lacs Band of Ojibwe have prepared Traditional Cultural Property studies within sections of the U.S. portion of the Alberta Clipper pipeline's Area of Potential Effect (APE). The DOS will take into account the Project's potential effects to archaeological and historic resources as well as TCPs through the Programmatic Agreement (PA), which will continue through construction of the Alberta Clipper Project.

Enbridge's main method of mitigation for potential impacts to cultural resources is avoidance. Types of avoidance identified by Enbridge include abandonment (or non-use of the location), narrowing of the construction corridor, limiting impacts (no change to the existing structure), and use of alternative crossing methods (such as horizontal directional drill). Based on the available information, Enbridge's proposed route, construction methods, and implementation of the PA, no impacts to cultural resources would be expected.

5.12 Air Quality and Noise

Air quality impacts associated with construction of the U.S. portion of the Alberta Clipper pipeline include emissions from fugitive dust, fossil-fueled construction equipment, open burning, and temporary fuel transfer systems and associated storage tanks. Air emissions during construction would be localized, intermittent, and short term. Emissions from construction-related activities would be conducted in compliance with applicable regulations and would not significantly affect local or regional air quality. Pipeline operations would not produce significant air quality impacts, and only minor emissions from fugitive emissions would occur from valves and pumping equipment. Enbridge has proposed measures in the state-specific EMPs (Appendix C of the EIS) and SPCC Plan (Appendix E of the EIS) that would reduce impacts related to air quality.

Noise impacts for a pipeline project generally fall into two categories: temporary impacts resulting from construction equipment and long-term or permanent impacts resulting from operation of the facility. Construction of the proposed pipeline would be similar to other pipeline projects in terms of schedule, equipment used, and types of activities. Construction would increase noise levels in the vicinity of pipeline activities, and the noise levels would vary during the construction period. In general, residential, agricultural, and commercial areas within 500 feet of the proposed pipeline right-of-way could experience short-term inconvenience from construction equipment noise. For horizontal directional drill crossings, drilling rig, pumps, generators, and mobile equipment produce noise that may impact nearby noise-sensitive areas. If noise from operations cannot be mitigated to the required level, other measures—such as providing temporary lodging at a local motel for affected residents—would be used to avoid exposing residents to objectionable noise. The temporary noise impacts from construction are expected to be minor with implantation of mitigation measures. Long-term noise impacts from operation of the pipeline would originate from the pump stations. Enbridge has proposed several mitigation measures at pump stations to reduce noise associated with the operation of pump stations for the U.S. portion of the Alberta Clipper pipeline. Material traveling through the buried pipeline would not be expected to emit audible noise above the surface or produce a perceptible level of vibration.

Overall, the impacts to air quality and noise during construction of the proposed pipeline are expected to be short term and minor. Air and noise impacts during operations would be minor but long term.

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5.13 Reliability and Safety

Crude oil released into the environment (spills) may affect natural resources, human uses and services, and aesthetics to varying degrees, depending on the cause, size, type, volume, rate, temperature of the oil, location, environmental conditions, and associated response actions. To minimize the potential for releases from the U.S. portion of the Alberta Clipper pipeline, Enbridge would design and construct the proposed pipeline in accordance with applicable design, engineering, and safety standards. To ensure the integrity of the pipeline and associated facilities during operation, Enbridge would incorporate the U.S. portion of the Alberta Clipper pipeline into its existing programs that (1) ensure that the integrity of its existing pipeline systems is maintained, including inspection of the pipelines and pipeline alignments; and (2) detect and respond to releases of oil that may occur. Enbridge would expand its existing emergency response plan to incorporate the Alberta Clipper Project. The existing plan has been approved by DOT's PHMSA; PHMSA approval of the revised plan would be required for pipeline operation. The emergency response plan identifies specific measures to prevent a release and to implement the appropriate emergency response if a release were to occur. A summary of the procedures included in the emergency response plan is presented in Appendix Q of the EIS.

With implementation of the Enbridge plans and procedures, the reliability and safety of the proposed Alberta Clipper Project is expected to meet or exceed industry standards.

5.14 Cumulative Impacts

The cumulative impacts analysis was conducted on both a Project-wide (the entire U.S. portion of the Alberta Clipper pipeline) and watershed-specific level. In general, the primary impacts of concern for the U.S. portion of the Alberta Clipper pipeline and other pipelines in the region of influence include short-term construction impacts and long-term land conversion and air emissions. The Project-wide cumulative impacts assessment concluded that the Alberta Clipper Project would not result in significant cumulative construction or operation impacts when considered in conjunction with other large-scale projects in the area of the U.S. portion of the Alberta Clipper pipeline, such as other pipelines.

Due to the localized and temporary nature of pipeline construction, the primary emissions of concern during construction of the U.S. portion of the Alberta Clipper pipeline would be greenhouse gas (GHG) emissions, including direct impacts from construction equipment and indirect emissions from land disturbance. Emissions during operation of the pipeline would primarily be associated with electrical generation to operate the pump stations (estimated at 0.3 million metric tons of CO₂ annually).

The cumulative analysis for refineries focused on air emissions, including GHG emissions, for recently upgraded refineries and potential new refineries. Based on the cumulative emissions from recent refinery upgrades, it is estimated that the emissions associated with the 450,000 bpd transported via the Alberta Clipper Project could increase CO emissions by about 1,000 tons per year (tpy), increase VOC emissions by approximately 400 tpy, and decrease emissions of other pollutants relative to currently permitted refinery emissions.

The watershed-level assessment considered large-scale projects and smaller-scale projects on a watershed-by-watershed basis along the route of the U.S. portion of the Alberta Clipper pipeline. Smaller-scale projects included road construction, commercial and residential development, flood control projects, energy projects, timber harvesting, mining, and conservation programs. The watershed-by-watershed assessment concluded that the Alberta Clipper Project would not result

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in significant construction or operation impacts when considered in conjunction with other large-scale and small-scale projects in individual watersheds along the Alberta Clipper Project route.

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6.0 Public and Agency Review and Comment

During its consideration of Enbridge's application for a Presidential Permit and consistent with federal requirements for informing and involving the public, Indian tribes and other public agencies (both federal and state) with jurisdiction concerning aspects of this project, DOS conducted extensive public outreach and consultation programs. The purpose of these programs was to solicit public and agency input on issues and alternatives to be considered during preparation of the EIS and to receive comments on the completeness of the EIS. These programs also served to provide government-to-government consultation with Indian tribes relative to historic properties consistent with the NHPA and to consult with relevant natural resource management agencies consistent with the Clean Water Act (CWA) and the ESA. The actions and programs conducted during consideration of Enbridge's application included:

- a) Publication in the Federal Register of a Notice of Receipt of an Application for a Presidential permit;
- b) Publication in the Federal Register of a Notice of Intent to Prepare an Environmental Assessment;
- c) Publication in the Federal Register of a Notice of Intent to Prepare an EIS and to Conduct Supplemental Scoping;
- d) Conduct of a series of public meetings in North Dakota, Minnesota and Wisconsin to receive input on the U.S. portion of the Alberta Clipper pipeline from the public, federal and state agencies and Indian tribes;
- e) Public Review and Comment on a Draft and Final EIS;
- f) Consultation with Indian tribes; and
- g) Consultation with other Federal and State Agencies (USEPA, USFWS, COE, BIA, MDNR, WDNR, State Historic Preservation Officers, etc.)

The result of these outreach and consultation programs is summarized below.

DOS published in the Federal Register a Notification of Receipt of the Enbridge Application for a permit on May 25, 2007 (72 FR 29360). That notification solicited public comment on the application for a 30-day period. Thereafter, the Department published in the Federal Register a Notification of Intent to Prepare an Environmental Assessment on July 27, 2007 (72 FR 41381). On March 31, 2008, the DOS issued a second NOI to announce its intention to prepare an Environmental Impact Statement (EIS) in order to address reasonably foreseeable impacts from the proposed action and alternatives (73 FR 16920). The Department's Notice of Availability of the Draft EIS and request for public comment was published in the Federal Register on December 5, 2008 (73 FR 74221), seeking comments by January 30, 2009. The Department received over 900 public comments in response to its notice and has taken them into account in making its determination on the Enbridge application. The Department's Notice of Availability of the Final EIS and request for public comments was published in the Federal Register on June 8, 2009 (74 FR 108), seeking comments by July 3, 2009. The Department received four comments in response to this notice; none contained any new substantial or substantive arguments regarding the proposed project.

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As required by Executive Order 13337, the Enbridge pipeline application and a Draft Environmental Impact Statement were transmitted to federal agencies for their review and comment on December 5, 2008. The Department of State received no objections from federal agencies regarding the issuance of a permit. The Department published a notice of the availability of the Final Environmental Impact Statement in the Federal Register on June 8, 2009 (74 FR 27229).

Concurrently, the Department took steps to act consistently with Section 106 of the National Historic Preservation Act. On July ___, 2009, I signed a Programmatic Agreement with the Advisory Council on Historic Preservation (AChP), the applicant, all three state historic preservation officials, and consulting federal and tribal agencies. Native American tribes were also invited to sign as concurring parties under the AChP's guidelines. The purpose of the Programmatic Agreement is to take into account the effect of the proposed Alberta Clipper Project on historic properties and to satisfy all responsibilities under Section 106 of the National Historic Preservation Act. In this connection, the Department has a pending request from the Fond du Lac band that the 1854 Ceded Territory be recognized as a Traditional Cultural Property. The Department plans to evaluate the request pursuant to the terms of the PA.

Consistent with Section 7 of the Endangered Species Act (ESA), DOS consulted with and obtained the concurrence of the U.S. Fish and Wildlife Service (USFWS) with a final Biological Assessment (BA) on the Alberta Clipper Project. The BA concludes that the construction of the Alberta Clipper Project may affect, but is not likely to adversely affect, species protected under the ESA.

Consistent with its authority under Executive Order 13337, the Department reviewed all of the available information and documentation, including comments submitted by federal, tribal, and state agencies and the public. Executive Order 13337 requires that Secretaries or Heads of certain agencies be notified of the Department's proposed determination concerning issuance of the Presidential Permit. Any agency required to be consulted under Section 1(g) of the Order that disagrees with the proposed determination may notify the Secretary of State within 15 days of this notice that it disagrees with the determination and request that the Secretary refer the application to the President.

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7.0 Decision and Basis for Decision

The Deputy Secretary of State has determined that a Presidential Permit will be issued to Enbridge Energy, Limited Partnership to construct, connect, operate, and maintain facilities at the border for the transport of crude oil between the United States and Canada across the international boundary, as described in the Application for a Presidential Permit dated May 15, 2007 and as further amended by the subsequent filings of Enbridge with the DOS and by information incorporated into the Final EIS issued June 5, 2009. The Deputy Secretary also finds that:

Construction and Operation of the Alberta Clipper Project Serves the National Interest - The addition of crude oil pipeline capacity between the Western Canada Sedimentary Basin (WCSB) and the United States serves the strategic interests of the United States for the following reasons:

- It increases the diversity of available supplies among the United States' worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions. Increased output from the WCSB can be utilized by a growing number of refineries in the United States that have access and means of transport for these increased supplies.
- It shortens the transportation pathway for a sizeable portion of United States crude oil imports. Crude oil supplies in Western Canada represent the largest and closest foreign supply source to domestic refineries that do not require, in contrast to other suppliers, many days or weeks of marine transportation.
- It increases crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer which is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.
- Moreover, the United States and Canada, through bilateral diplomacy and a Clean Energy Dialogue process that is now underway, are working across our respective energy sectors to cooperate on best practices and technology, including carbon sequestration and storage, so as to lower the overall environmental footprint of our energy sectors. The Government of Canada and the Province of Alberta have also set greenhouse gas reduction targets and implementation programs to help them achieve them.
- Approval of this permit will also send a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United State's energy imports, and in the immediate term, will provide construction jobs.
- It provides additional supplies of crude oil to make up for the continued decline in imports from several other major U.S. suppliers.

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- Construction and Operation of the Alberta Clipper Project Meets Environmental Protection Policies – The DOS concludes that the proposed Alberta Clipper Project, if designed, constructed, and operated in accordance with the Project Description in Section 2.0 of the FEIS, as amended by additional approaches and mitigation measures agreed to by Enbridge as a result of the DOS environmental analyses and as further amended by specific permit conditions contained in the permit and those to be assigned by the state and federal agencies with jurisdiction over aspects of the project along the pipeline corridor, would result in limited adverse environmental impacts.

Concerns have been raised about higher-than-average levels of greenhouse gas (GHG) emissions associated with oil sands crude. The Department has considered these concerns, and considers that they are best addressed in the context of the overall set of domestic policies that Canada and the United States will take to address their respective greenhouse gas emissions. The United States will continue to reduce reliance on oil through conservation and energy efficiency measures, such as recently increased Corporate Average Fuel Economy (CAFÉ) standards, as well as through the pursuit of comprehensive climate legislation and an ambitious global agreement on climate change that includes substantial emission reductions for both the United States and Canada. The Department, on behalf of the Administration, will urge ambitious action by Canada, and will cooperate with the Canadian government through the U.S.-Canada Clean Energy Dialogue and other processes to promote the deployment of technologies that reduce our respective GHG emissions.

The Scope of the Permit Issued to Enbridge shall extend only up to and including the first mainline shut-off valve or pumping station in the United States. Executive Order 11423, initially delegating the President's authority to the DOS, specifically notes that "the proper conduct of the foreign relations of the United States requires that Executive permission be obtained for the construction and maintenance at the borders of the United States of facilities connecting the United States with a foreign country." Similarly, Section 1 of Executive Order 13337, further delegating the President's authority, states that DOS has authority for issuance of Presidential permits for the "construction, connection, operation, and maintenance at the borders of the United States of facilities... to or from a foreign country." Hence, in reviewing an application for a Presidential permit, the DOS, takes into account the impact the proposed cross-border facility (i.e., pipeline, bridge, road, etc.) will have upon U.S. relations with the country in question, whether Canada or Mexico, and also on the impact it will have on U.S. foreign relations generally. While the DOS also takes into account the various environmental and other domestic issues mentioned above, DOS does not have, and has never had, authority over facilities, including pipeline, bridges, roads, etc., located entirely within the United States that do not cross the international border with either Canada or Mexico. For these reasons, the Department does not believe that the scope of the permit it issues in this case should extend any further than necessary to protect that foreign relations interest. The permits the DOS issues under Executive Orders 11423 and 13337 routinely include provisions permitting DOS to take possession of the facilities at the border for national security reasons or to direct the permittee to remove the facilities in the immediate vicinity of the international border if so directed by the DOS. Since that is the case, the DOS has concluded that a limitation of the scope of the permit in this case to those pipeline facilities within the United States up to and including the first mainline shut-off valve or pumping station would adequately protect the DOS' foreign relations interest in implementing Executive Orders 11423 and 13337.

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8.0 National Interest Determination

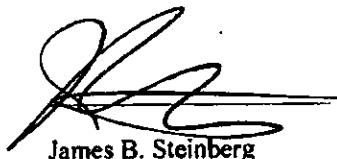
Pursuant to the authority vested in me under Executive Order 13337 of April 30, 2004, as amended, Department of State Delegation of Authority No. 118-2 of January 23, 2006, and Department of State Delegation No. 245-1 of February 13, 2009, and subject to satisfaction of the requirements of sections 1(g) and 1(i) of Executive Order 13337, I hereby determine that issuance of a permit to Enbridge Energy, Limited Partnership, a limited partnership organized under the laws of the State of Delaware, which is a wholly owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners") which is a Delaware master limited partnership headquartered at 1100 Louisiana, Suite 3300, Houston, Texas 77002, to construct, connect, operate and maintain facilities at the border of the United States and Canada for the transport of crude oil between the United States and Canada across the international boundary at Cavalier County, North Dakota, would serve the national interest.

The Presidential Permit issued to Enbridge shall include authorization to construct, connect, operate, and maintain at the border of the United States facilities for the transport of crude oil between the United States and Canada across the international boundary as described in the Presidential Permit application received from Enbridge by DOS on May 15, 2007, as amended, and in accordance with the mitigation measures described in the Environmental Mitigation Plan (and other similar mitigation plans) contained in the FEIS, as amended. No construction or other actions shall be taken by Enbridge prior to Enbridge's acquisition of all other necessary federal, state, and local permits and approvals from agencies of competent jurisdiction. Enbridge shall provide written notice to the Department at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted or discontinued.

This determination shall become final fifteen days after the Secretaries of Defense, Interior, Commerce, Energy, Homeland Security and Transportation, the Attorney General, and the Administrator of the Environmental Protection Agency have been notified of this determination, unless the matter must be referred to the President for consideration and final decision pursuant to section 1(i) of said Executive Order.

03-August 2007

Date



James B. Steinberg

Deputy Secretary of State

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July 24, 2009

ROD final 7-30.doc

Approved: EEB: David D. Nelson, Acting – ok

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L/EEB: Wynne Teel – ok
L/OES: Keith Benes – ok
L/OES: John Kim – ok
WHA/CAN: Eleanore Fox – ok
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S/SECC: Todd Stern – ok
P: Laura Rosenberger – ok
S/P: Francisco Gonzalez – ok